

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/CS/SB 424

INTRODUCER: Finance and Tax Committee, Transportation Committee and Senator Gardiner

SUBJECT: Transportation

DATE: April 20, 2009

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	Fav/CS
2. <u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	Fav/1 amendment
3. <u>ODonnell</u>	<u>McKee</u>	<u>FT</u>	Fav/CS
4. _____	_____	<u>TA</u>	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute contains a number of issues affecting the Florida Department of Transportation (FDOT, the department) and transportation in general. Specifically, the bill:

- Changes the position of Executive Director of the Florida Transportation Commission (FTC) from the Florida Retirement System's (FRS) Selected Exempt Service (SES) to Senior Management Service (SMS).
- Better integrates airport planning and adjacent land use in the local government comprehensive planning process.
- Exempts certain seaport-related projects from development-of-regional-impact (DRI) review if the project is within 3 miles of a seaport.
- Authorizes FDOT to award stipends to non-selected design-build firms who have submitted responsive proposals for construction projects.
- Revises surety bond recording requirements and includes maintenance contractors in the process used by construction contractors to arbitrate contract disputes.
- Provides additional exemptions to utility companies from utility relocation costs related to transportation projects.
- Includes public pay telephones and accompanying advertising in the types of "street furniture" which may be installed within highway rights-of-way under certain circumstances.

- Requires all new or replacement electronic toll collection systems installed on toll roads in the state to be interoperable with FDOT's electronic toll collection system.
- Authorizes the issuance of revenue bonds related to HOT/express lanes on I-95 in Broward and Miami-Dade Counties and to implement variable toll rates on the HOT/express lanes.
- Provides for alternative tolling and payment methods including video billing and variable pricing, and eliminates the requirement to maintain a uniform toll rate structure on the turnpike system.
- Reinstates the Small County Resurfacing Assistance Program (SCRAP) in 2012. Certain eligibility criteria relating to ad valorem tax rates are removed.
- Modernizes the definition of 'automatic changeable facing' as it relates to outdoor advertising, revises the sign permitting process, and directs FDOT to accept a local government's determination of customary use in relation to wall murals.
- Makes changes to the interstate highway logo sign program.
- Directs FDOT to conduct a study examining transportation alternatives for the Interstate 95 travel corridor.
- Repeals ch. 343, part III, F.S., to abolish the non-functioning Tampa Bay Commuter Transit Authority.
- Authorizes transportation concurrency backlog authorities to issue bonds and exceed the 25 percent tax increment financing rate upon agreement of all affected taxing authorities.
- Increases from \$100 million to \$250 million, the maximum dollar amount for projects which may be added to FDOT's work program when funded by other governmental entities.
- Creates a new reimbursement program for small counties to loan up to \$200 million to FDOT in order to advance projects outside the adopted work program into the work program with repayment agreements of up to 30 years.
- Revises the notification process used by FDOT when amending the work program.
- Excludes transportation authorities created under ch. 343, F.S., from the definition of 'agency' for the purposes of ch. 120, F.S., the Administrative Procedure Act.

Increased toll charges are authorized to fund state transportation projects.

This bill substantially amends ss. 20.23, 120.52, 125.42, 163.3177, 163.3178, 163.3182, 337.11, 337.18, 337.185, 337.403, 337.408, 338.01, 338.165, 338.166, 338.2216, 338.231, 339.135, 339.2816, 348.0003, 479.01, 479.07, 479.08, 479.156, 479.261 of the Florida Statutes.

This bill creates s. 338.166 and a new unnumbered section of the Florida Statutes.

Part III of ch. 343, F.S., is repealed.

II. Present Situation:

Florida Transportation Commission (FTC)

Section 20.23, F.S., creates the FTC to provide oversight of the Florida Department of Transportation (FDOT) and makes transportation policy recommendations to the Governor and Legislature. The FTC is required to appoint an executive director and assistant executive director who serve under the direction, supervision, and control of the commission. The executive director is authorized to employ staff as necessary and within budgetary limitations. Currently,

there are four employees at the FTC; all are classified as SES personnel for the purposes of salary and benefits.

Airports and Comprehensive Plans

Section 163.3177, F.S., identifies the required elements of local comprehensive plans. A listing of required elements includes elements for capital improvement, future land use, intergovernmental coordination, housing, and transportation. Currently, airports are documented within a local government's infrastructure inventory as part of the comprehensive plan. However, there is no policy integration of compatible land uses of areas located outside of the geographic boundaries of an airport master plan.

Transportation Concurrency Backlog Authorities (TCBAs)

Local governments are required to use a systematic process to ensure new development does not occur unless adequate infrastructure is in place to support the growth. The requirement for public facilities and infrastructure to be available concurrent with new development is known as concurrency. Transportation concurrency uses a graded scale of roadway level of service (LOS) standards assigned to all public roads. The LOS standards are a proxy for the allowable level of congestion on a given road in a given area. Stringent standards (i.e., fewer vehicles allowed) are applied in rural areas and easier standards (i.e., more vehicles) are allowed in urban areas to help promote compact urban development. FDOT is responsible for establishing LOS standards on the highway component of the Strategic Intermodal System (SIS) and for developing guidelines to be used by local governments on other roads. Local governments, however, have broad discretion in the implementation of transportation concurrency because they designate the concurrency management strategies and exception areas within their boundaries, and control land use decisions within their jurisdictions.

The 2007 Legislature passed HB 985 creating s. 163.3182, F.S., which allows any county or municipality with an identified transportation concurrency backlog to create a TCBA. The governing board of the county or municipality would comprise the authority's membership and develop and implement a plan to eliminate all backlogs within its jurisdiction. The plan must identify all roads designated as failing to meet concurrency requirements and include a schedule for financing and construction to eliminate the backlog within 10 years of plan adoption. The plan is not subject to the twice-per-year restrictions on comprehensive plan amendments. To fund the plan's implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25 percent of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financed and fully financially feasible for purposes of calculating transportation concurrency and a landowner may proceed with development (if all other requirements are met) and no proportionate share or impact fees for backlogs may be assessed. The authority is dissolved upon completion of all backlogs.

DRI Review

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Regional planning councils assist the developer by coordinating multi-agency DRI review. The

council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments regarding the approval, mitigation, or denial of development proposals.

Design-Build Contracts

Section 337.11, F.S., provides FDOT may combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract. Such contract is referred to as a design-build contract. In traditional contracting for transportation projects, the conventional process results in a linear progression of design-bid-build. In design-build contracts, the design and construction phases occur concurrently conserving considerable amounts of time. Design-build contracts may be advertised and awarded based on FDOT rule and procedures for administering design-build contracts. FDOT must receive at least three letters of interest in order to proceed with a request for design-build proposals. FDOT must request proposals from no fewer than three of the design-build firms submitting letters of interest. If a design-build firm withdraws from consideration after the FDOT requests proposals, the evaluation process may continue if at least two proposals are received.

Contractor Surety Bonds

Section 337.18, F.S., requires a surety bond for the successful bidder in an amount equal to the awarded contract price. Current law provides that upon execution of the contract, and prior to beginning any work under the contract, the contractor shall record in the public records of the county where the improvement is located the payment and performance bond required under this section. Any claimant shall have a right of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract.

State Arbitration Board

Section 337.185, F.S., establishes a State Arbitration Board to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between FDOT and the various contractors with whom it contracts. The section requires every contractual claim in an amount up to \$250,000 per contract or, at the claimant's option, up to \$500,000 per contract or, upon agreement of the parties, up to \$1 million per contract, that cannot be resolved by negotiation between FDOT and the contractor be arbitrated by the board. Either party may request the claim be submitted to binding private arbitration. FDOT and contractors have used this dispute resolution process to resolve many claims arising out of construction contracts. Most frequently, matters are presented without active legal representation by either party, little or no formal discovery is taken and the costs of the proceeding are substantially less than those that would be expected in a civil judicial proceeding. The process benefits both FDOT and construction contractors by facilitating prompt claim settlement and reducing or eliminating litigation costs. Maintenance contracts are not included in this process. Routine maintenance contracts include:

- pavement patching;
- shoulder repair;
- cleaning and repair of drainage ditches;
- traffic signs, and structures;
- mowing;

- bridge inspection and maintenance;
- pavement striping;
- litter cleanup;
- other similar activities.

Utility Relocations

Section 337.403, F.S., requires utility owners to remove or relocate utilities at their own expense when the relocation is necessary for the construction of a publicly-owned transportation project. There are three exceptions:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, the FDOT pays for the removal or relocation with federal funds.
- Where the cost of the utility improvement, installation, or removal exceeds the FDOT's official cost estimates for such work by 10 percent, FDOT participation is limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract.
- When the relocation of the utility takes place before construction commences, FDOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the relocation.

Street Furniture

Section 337.408, F.S., authorizes FDOT to regulate and restrict the placement of benches, transit shelters, and other "street furniture." In certain circumstances, the department may remove or relocate such objects which, because of their placement or location, may endanger life or property. FDOT is authorized to adopt rules relating to the size of such furniture and any accompanying advertising display features.

Electronic Toll Collection Systems Interoperability

In addition to cash deposit toll collections, FDOT currently maintains one Electronic toll collection (ETC) system, SunPass, statewide on the turnpike and at other FDOT toll facilities. Although there is currently no statutory requirement for FDOT and any other transportation authority to use interoperable ETC systems, SunPass is compatible with the systems of most independent toll agencies within Florida. Interoperability of ETC systems enhances their usefulness and generally makes the concept of ETC more desirable. ETC is more cost effective and provides improved mobility and enhanced traffic flow when compared to cash toll collection. FDOT estimates more than \$450 million of costs have been avoided by not having to expand toll facilities for increased cash transactions since the 2001 deployment of the SunPass program. Currently, 65 percent of turnpike customers pay through electronic toll collection. FDOT has established a goal to increase the number of customers paying electronically to 75 percent. As ETC continues to increase, FDOT intends to modify its toll collection process to provide more payment options to customers and improve mobility by eliminating cash toll collection at the roadside.

Today, SunPass accounts are replenished via credit card payments. Emerging technology will soon give customers the option of cash replenishment so customers who wish to pay with cash and remain anonymous (i.e. not provide customer information) may do so. This cash payment

method will be maintained off the roadway, so these cash customers will enjoy the same non-stop travel as traditional SunPass customers. The department is also anticipating the deployment of a video billing system. This method of payment will allow customers to use the roadway without a transponder or other device, instead using their license plate for identification and billing. Video billing, as this is called, provides for pre-payment and post-payment opportunities. Customers who pre-pay with video billing will call a customer service center and establish an account with license plate and credit card information to allow for payment. Customers who post-pay may establish the account after the fact; however, this payment option is more expensive to administer and would result in a higher cost. Finally, customers who do not register for video billing will be identified based on their license plate information and will be billed through the mail for their toll activity. This method of toll collection has significant backroom processing costs, and therefore, will require additional administrative fees. FDOT currently lacks authorization to impose and recover certain administrative amounts in connection with the collection of tolls.

Toll Facilities Bonding

The Florida Constitution requires FDOT to obtain legislative authorization in order to issue bonds for a revenue project. Current law (s. 338.165, F.S.) authorizes issuance of bonds secured by excess toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the adopted work program. These facilities, although toll facilities, are not part of the turnpike system.

High-occupancy Toll/Express Lanes

FDOT is currently engaged in a project to provide 'managed lanes' on the existing I-95 corridor from I-395 to the Golden Glades Interchange in Miami-Dade County. The project has converted High Occupancy Vehicle Lanes (HOV) to managed lanes, also known as HOT lanes. By restriping the existing road and shoulder into narrower lanes, the existing single HOV lane has been replaced by two HOT/managed lanes. Buses and HOVs with three or more occupants (HOV-3) may use the HOT/managed lanes at no cost while single occupant vehicles (SOVs) pay a variable toll based on the operating speed of the managed lanes. HOT/managed lanes have variable congestion pricing, i.e., tolls fluctuate with increased congestion so that a minimum operating speed of 50 MPH may be maintained at all times. Previously, transit (buses) and vehicles with a minimum occupancy of two persons (HOV-2) were permitted to use the HOV lanes. Operational changes to shoulders on I-95 allows for provision of additional HOT lanes south of the Golden Glades Interchange. Phase II of the I-95 Express project would extend the lanes to I-595 in Broward County.

Toll Rates and Administration Costs

Under s. 338.231, F.S., FDOT is required to equalize, to the maximum extent feasible, the turnpike tolling structure, so the per mile toll rate will be approximately the same throughout the turnpike system. FDOT has recently implemented innovative toll collection methods which include the use of Unpaid Toll Notices, Video Accounts and Image-based Tolling. Unpaid Toll Notices are issued to customers that inadvertently use a toll facility without paying a toll. At present, this notification method requests payment of the original toll amount due with no enforcement action taken as long as the payment is received within 21 days from the date of the

Unpaid Toll Notice. FDOT is incurring much higher operating costs due to the image processing, verification, and mail costs associated with such program.

FDOT has also implemented a new Video Account pilot program called Toll-by-Plate whereby infrequent customers or rental car users can create an account using the vehicle's license plate number as a form of identification. A prepaid account or credit card guarantee is used to fund transactions whenever a license plate matching process determines the user has a valid Video Account. The Toll-by-Plate program is intended to be an integral part of the FDOT's open road tolling strategy which will eliminate the need for all vehicles to stop at toll plazas to pay their tolls. Image-based Tolling is used to identify SunPass users whose transponders failed to register when traversing a tolling station. Due to the higher operating costs associated with image processing and license plate verification and matching, the uniformity of the per mile toll rate is questionable.

Local Government Reimbursement Program

Section 339.12, F.S., provides any governmental entity may aid in any project or project phase included in FDOT's five-year adopted work program by contributions of cash, bond proceeds, time warrants, or other goods or services of value. Prior to accepting a contribution, FDOT must enter into agreements with the governmental entity for the project or project phases. FDOT may not under any circumstance receive contributions in excess of the actual cost of the project or project phase. By specific provisions in the written agreement between the FDOT and the governmental entity, FDOT is authorized to reimburse the governmental entity for the actual amount of the contribution on a highway project or project phases that are not revenue producing and are contained in FDOT's adopted work program, or any public transportation project contained in the adopted work program. Subject to appropriation of funds by the Legislature, FDOT may commit state funds for reimbursement of projects or project phases. Reimbursement to the governmental entity for these projects or project phase must be made from funds appropriated by the Legislature, and reimbursement for the cost of the projects or project phase is to begin in the year the project or project phase is scheduled in the work program. Funds advanced pursuant to this section, which were originally designated for transportation purposes and reimbursed to a county or municipality, must be used by the county or municipality for any transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. Expenditures related to routine maintenance of roads are excluded from the eligible projects in which these reimbursements can be used to fund. In addition, FDOT may enter into agreements for projects or project phases not included in the five-year adopted work program. These advancements include only projects or project phases for acquisition of rights-of-way, construction, construction inspection, and related support phases. Agreements for advancement of projects or project phases from outside the five-year work program shall only include high priorities of the governmental entity. The total amount of project agreements for projects or project phases not included in the adopted work program may not at any time exceed the existing FDOT cap of \$100 million statewide.

The Transportation Work Program

Section 339.135, F.S., authorizes and establishes guidelines for the FDOT to develop a State Transportation Five-Year Work Program. The Work Program comprises a list of transportation

projects scheduled for implementation during the ensuing five year period, based on a complete financial plan for the State Transportation Trust Fund (STTF) and other funds managed by FDOT. In developing the Work Program, FDOT coordinates with its seven district offices, the Turnpike Enterprise Office (Turnpike), Metropolitan Planning Organizations (MPOs), and local governments. Essentially, the FDOT Work Program reflects the priorities of MPOs, counties, and FDOT in one program of scheduled activities and improvements.

The Work Program includes all proposed project commitments and is classified by major program and appropriation category. Large projects are typically scheduled in phases (i.e., planning, design, and construction) to allow greater flexibility and liquidity of funds; this prevents large amounts of dollars from being tied up unnecessarily for long periods of time. The allocation of funds for new construction to the districts is based on a statutory formula using equal parts of population and motor fuel tax collections. However, the funding for programs with quantitative needs assessment (e.g., resurfacing, bridge repair, the Strategic Intermodal System [SIS], etc.) is allocated to the districts based on the results of those assessments. Thus, for example, the funding of SIS projects and projects from other centrally-managed programs are not subject to population/fuel tax collection distribution formula.

Development of the Work Program is guided by the Florida Transportation Plan (FTP) and the Program and Resource Plan (PRP). The FTP (part of the State Comprehensive Plan) is a statewide transportation plan that documents FDOT's long and short range goals and objectives. The FTP long range component identifies goals and objectives to be achieved with available resources for the next 20-25 years. The annual short range component identifies objectives and strategies to be implemented over the next five to ten years in moving toward the long range goals and objectives. At the local level, the program must be consistent to the maximum extent feasible with the capital improvement elements of the local government comprehensive plans.

Although the Work Program contains a five-year schedule of programmed transportation improvements, it is updated annually by revising the previous year's Work Program. This "Tentative Work Program" results from rolling the projects in the previous Work Program's last four years' forward (i.e., Years 2, 3, 4, and 5 become Years 1, 2, 3, and 4 in the Tentative Work Program), and the programming of a new fifth year of projects. Section 339.135(4), F.S., requires FDOT to "minimize changes and adjustments that affect the scheduling of project phases in the 4 common fiscal years." Any rescheduling or deletion of a project must be determined to be necessary for specific reasons by the Secretary of Transportation. All changes must be clearly identified. Section 339.135(4), F.S., further provides the legislative intent:

"...that the first 3 years of the adopted work program stand as the commitment of the state to undertake transportation projects that local governments may rely upon for planning and concurrency purposes and in the development and amendment of the capital improvements elements of their local government comprehensive plans."

The Tentative Work Program must be submitted to the Governor, legislative appropriations committees, the Florida Transportation Commission (FTC) and the Department of Community Affairs (DCA) at least 14 days prior to the convening of the regular legislative session. After DCA reviews the Tentative Work Program for consistency with local comprehensive plans, the FTC conducts a statewide public hearing to evaluate the program for compliance with laws and

FDOT policies. Following the FTC's evaluation the Legislature, through the General Appropriations Act and any other appropriation, provides the budget for the Work Program which is adopted by FDOT prior to the beginning of the next fiscal year.

After adoption, the Work Program may be amended at any time during the fiscal year to transfer appropriated funds within or between categories. Certain types of amendments are subject to the following notification requirements:

- When an amendment:
 - deletes any project or project phase;
 - adds a project costing over \$150,000 in appropriated funds;
 - advances or defers a right-of-way, construction, or public transportation phase from one fiscal year to another when that phase costs \$500,000 or more; or
 - advances or defers a preliminary engineering or design phase costing over \$150,000 from one fiscal year to another,
- then, FDOT must notify
 - The Governor;
 - Chairmen of both legislative appropriations committees;
 - Chairmen of both legislative transportation committees;
 - Each legislator who represents a District/Turnpike Enterprise affected by the proposed amendment;
 - Each Metropolitan Planning Organization affected by the proposed amendment; and
 - Each local government affected by the proposed amendment.

Under s. 339.135(7), F.S., the Governor shall not approve a proposed amendment until 14 days after receipt. If either of the chairs of the legislative appropriations committees submits specific reasons for objecting to a proposed Work Program amendment, the Governor must disapprove the proposed amendment. In the event of an emergency as defined by s. 252.34(3), F.S., as:

“any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial harm injury or harm to the population, or substantial damage to or loss of property.”

the Governor may approve the amendment in the event a delay would be detrimental to the interests of the state. Notification of the parties listed above must be made within seven days of an emergency approval.

Small County Resurfacing Assistance Program (SCRAP)

The SCRAP assists small county governments with a population of 75,000 or less in resurfacing and reconstructing county roads. The SCRAP began in FY 2000 and is authorized until FY 2010 to program up to \$25 million annually. Small counties are eligible to compete for funds that have been designated for the SCRAP for resurfacing or reconstruction projects on county roads that were part of the county road system on June 10, 1995. Capacity improvement on county roads shall not be eligible for funding under the program. This program is fully funded by FDOT

including any supplemental agreements and overruns. At a minimum, small counties shall be eligible only if:

- The county has enacted the maximum rate of the local option fuel tax authorized by Section 336.025(1)(a), F.S., and has imposed an ad valorem millage rate of at least 8 mills, or
- The county has imposed an ad valorem millage rate of 10 mills.

For fiscal years 2007-2008 and 2008-2009, the millage rate levied in 2006 may, at the option of a county, be used for purposes of determining eligibility.

FDOT prioritizes road projects for funding under the program as follows:

- The primary criterion is the physical condition of the road as measured by the Department. As secondary criteria the Department may consider the following:
 - Whether a road is used as an evacuation route.
 - Whether a road has high levels of agricultural travel.
 - Whether a road is considered a major arterial route.
 - Whether a road is considered a feeder road.
 - Other criteria related to the impact of a project on the public road system or on the state or local economy as determined by the department.

Expressway Authority Financial Disclosure Requirements

In 2007, the Legislature amended the financial disclosure requirements of expressway and bridge authority members created under the Expressway Authority Act (Part I – Ch. 348, F.S.). Prior to the change, members of any authority created under that part (currently only the Miami Dade Expressway Authority) were required to comply with the applicable financial disclosure requirements of ss. 112.3145, 112.3148, and 112.3149, F.S. Upon the 2007 law taking effect, members of the Miami Dade Expressway Authority were required to comply with the applicable financial disclosure requirements of s. 8, Article II of the State Constitution.

Outdoor Advertising

Chapter 479, F.S., provides for the control and permitting of signs adjacent to the highways of the state. Signs on the State Highway System which are outside of an incorporated area require a permit from the department. The department-issued permit tag currently must be posted on the sign face. After a permit has been issued, an applicant must be provided 30 days to make corrections if it is determined the application for the permit contained knowingly false or misleading information. A service fee of \$3 is currently required for a replacement tag.

FDOT has noted the boundaries of incorporated areas change frequently, often without notice to the department, making the control area difficult to define for both the department and the regulated industry. Also, with the advent of vinyl sign wraps and the use of digital displays, it is often impractical to affix the permit to the sign face. The result is tags are posted in many different locations, making it difficult for FDOT to determine whether the tag is properly posted. The department has also noted the \$3 fee for a replacement permit tag is well below the cost to provide the tag.

Logo Program

Signs on the interstate highway system are regulated and approved by the Federal Highway Administration (FHWA). Section 479.261(1), F.S., requires FDOT to establish a Logo Sign Program for the interstate highway system rights of way. The program provides information to motorists about available gas, food, lodging, camping, and attraction services at interstate interchanges. From time to time, FHWA approves new categories of signs; however, the statute as currently written does not allow the addition of other categories of services as they achieve federal approval.

Permits for participation in the gas, food, lodging, and camping categories are based only on a set annual fee. However, participation in the attractions category is unique in that an admission fee for entry to the attraction is required, and permits must be awarded annually by the department to the highest bidder.

The department is required to establish permit fees in an amount sufficient to offset the total cost of administering the logo sign program, but the permit fee is capped at \$1,250 by law. The annual fee is currently set at \$1,000 by department rule. The program is implemented and operated through a privatized consultant contract which expired on December 31, 2008.

The existing logo program is essentially based on a first-come, first-served priority with the option for qualifying businesses to renew participation on an annual basis. This has resulted in the generation of extensive waiting lists of other businesses desiring to participate in the program for several interchanges on the interstate system where the structure displaying the particular business category is full. The proposal provides for the implementation of a 3-year rotation of participating businesses at those interchanges where wait lists exist.

Interstate 95

Interstate 95 (I-95) is the predominant interstate highway on Florida's east coast. According to FDOT calculations using 2006 data, 159 miles (42%) fail to meet the adopted minimum level of service standards and may be considered congested. Routes paralleling I-95 for long distances in Florida include:

- U.S. Route 1, which closely parallels I-95 from Jacksonville to Miami;
- State Road A1A, along the coastline;
- U.S. Route 17, running through Jacksonville, Palatka, Deland, Orlando, before heading West through Bartow to Punta Gorda;
- U.S. Route 301, from the Georgia line to Interstate 75 in Marion County; and
- The Florida Turnpike, especially from Fort Pierce to Miami.

Tampa Bay Commuter Transit Authority

The Tampa Bay Commuter Transit Authority (TBCTA) was created by the Florida Legislature in 1990 (as the Tampa Bay Commuter Rail Authority) for the purposes of developing and operating a commuter rail or ferry system. The authority board comprises elected and citizen representatives from Hernando, Hillsborough, Pasco, Pinellas, and Polk Counties, as well as the affected FDOT District Secretaries or their designees, and an appointee of the Governor. Representatives from each of the five counties' local transit authorities serve as ex officio members. The authority has directed some organizational work and feasibility studies; however, the authority has been dormant for several years due to a lack of consensus among local authorities regarding the funding of a system, routes and design features.

III. Effect of Proposed Changes:

Florida Transportation Commission

Section 20.23, F.S., is amended to set the salary and benefits of the executive director of the FTC in accordance with the SMS. This would increase the position's retirement accrual rate from 1.6% of annual salary to 2%.

Definition of Agency

Section 120.52, F.S., is amended to exclude transportation authorities created under ch. 343, F.S., from the definition of 'agency' for the purposes of ch. 120, F.S., the Administrative Procedure Act.

Airports and Comprehensive Plans

Planning requirements are amended to require local government comprehensive plans to address future land use impact on lands adjacent to airports and to address airport zoning in the interlocal coordination element of the comprehensive plan. Local governments required to address the compatibility of lands adjacent to airports in their future land use plan element must do so by June 30, 2012.

DRI Review Exemption for Port Projects

Section 163.3178, F.S., is amended, to preclude certain seaport-related projects from development-of-regional-impact (DRI) review. Facilities determined by the Department of Community Affairs and the applicable general purpose local government to be port-related industrial or commercial projects are not to be considered a development of regional impact provided they are located within 3 miles of a port and rely upon the utilization of port and intermodal transportation facilities or are in a port master plan area.

Transportation Concurrency Backlog Authorities

Section 163.3182, F.S., is amended establishing the legislative findings that inadequate transportation facilities and deficiencies affect the health, safety, and welfare of the state's residents, and adversely affect economic development and growth of the tax base. Elimination of the deficiencies and inadequacies and satisfaction of transportation concurrency standards are paramount public purposes for the state, counties, and municipalities. TCBA's are authorized to issue bonds and other similar debt instruments. The maturity date of any debt may be no more than 40 years provided, however, all projects eliminating the concurrency backlog are scheduled within the first 10 years. Transportation concurrency trust funds must remain funded and the TCBA must remain in existence until all projects are completed or all debts defeased. The tax increment to be earmarked for the transportation concurrency trust fund, *i.e.*, the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created, is raised from 25 percent to 50 percent. Upon agreement by all taxing authorities included in the interlocal agreement creating the TCBA, the percentage may exceed 50 percent.

Design-Build Contracts and Stipends

Section 337.11, F.S., is amended to authorize FDOT to award a monetary stipend to non-selected design-build firms who have submitted responsive proposals for construction projects. The amount of the stipend is determined using an analysis of the estimated developmental costs and

the anticipated degree of engineering design during the procurement process. FDOT will retain the right to utilize elements of these designs in future designs as a stipulation of the contractor's stipend payment.

Contractor Surety Bonds

Section 337.18, F.S., is amended to allow contractors to maintain copies of any surety or performance bond at its principal place of business or jobsite office rather than in the public records of the county in which the contracted work is being performed. A copy of the bond may also be obtained from FDOT by request under ch. 119, F.S.

State Arbitration Board

Section 337.185, F.S., is amended to include maintenance contracts in the existing State Arbitration Board process.

Utility Relocations

Section 337.403, F.S., is amended to add an exception to the requirement for utility owners to remove or relocate utilities at their own expense when necessary for the construction of a transportation project.

The bill places the responsibility for relocating a utility on the authority having jurisdiction over the transportation facility if the utility was initially installed to serve only the authority, its tenants, or both. For example, if a power line originally installed to supply electricity to a toll plaza must be relocated due to widening the toll road, the toll authority, not the power company, must pay the cost of moving the line. However, if the power line was subsequently expanded to serve a nearby housing development, the power company would be responsible for the costs of relocating the expanded portion of the line. If any future agreements do not expressly address future responsibilities for removal or relocation, the authority will bear the costs.

Section 337.403, F.S., is also amended to provide that when an electric facility is relocated underground in order to enhance vehicular, bicycle, or pedestrian safety, and when the facility has been transferred from a private to a public utility within the past 5 years, then FDOT is responsible for the relocation costs.

Payphones included with Street Furniture

Section 337.408, F.S., is amended to permit the installation of pay telephones and accompanying advertising inside the public right-of-way of certain roadways and to include pay telephones in the list of street furniture, receptacles, and other items within the right-of-way over which FDOT has authority to direct the immediate relocation or removal.

Electronic Toll Collection (ETC) Systems Interoperability

A new paragraph (6) is added to s. 338.01, F.S., requiring all operators of limited access toll facilities to maintain interoperability with FDOT's ETC when providing new systems, or replacing existing systems.

High-Occupancy Toll (HOT) Lanes and Express Lane Revenue Bonding

Section 338.165, F.S., is amended to clarify that it does not apply to HOT and express lane facilities. A new section (s. 338.166, F.S.) is created relating only to HOT or express lanes which:

- allows bonds to be issued which are secured by toll revenues from the I-95 Express project in Miami-Dade and Broward Counties;
- authorizes the department to charge variable tolls on HOT or express lanes;
- authorizes the department to continue to collect tolls on the HOT or express lanes after the bonds are discharged;
- directs the department to use any remaining toll revenue for the construction, maintenance, or improvement of other roads on the State Highway System;
- extends the prohibition for charging tolls on interstate highways except where tolls were being charged on July 1, 1997, or on HOT or express lanes; and
- provides the section does not apply to the turnpike system.

Turnpike Toll Collection

Section 338.2216, F.S., is amended to direct the Florida Turnpike Enterprise to implement new toll collection technologies and processes including video billing and variable pricing. Additional payment methods, such as video billing and cash replenishment would provide drivers with more flexibility for payment options without compromising the other benefits of non-stop travel. Drivers will still have the flexibility to pay tolls with cash, but will no longer have to stop on the roadway to do so.

Toll Rates and Administration Costs

Section 338.231, F.S., is amended to delete language comprising subsection (1) which requires a system wide equivalent-cost-per-mile toll structure. The deletion of subsection (1), including the only statutory reference to a “uniform system rate,” allows the Florida Turnpike Enterprise to provide innovative methods of toll collection, such as variable pricing. New language is added allowing the Florida Turnpike Enterprise to temporarily establish a toll-rate lower than the rate established through FDOT’s rule-making process. These changes provide flexibility for additional toll payment options and allow the administrative costs of such additional customer options to be allocated fairly among the customers selecting such payment options.

Local Government Reimbursement Program

Section 339.12, F.S., is amended to raise the \$100 million cap on projects advanced into the work program by contributions from local governments to \$250 million. Additionally, a new paragraph is added to authorize FDOT to enter long-term repayment agreements with counties having populations of 150,000 or fewer persons, for the purpose of advancing transportation projects not already included in the five-year work program. Any project so advanced must be a high priority of the governmental entity, be included in the local comprehensive plan, and may only be reimbursed using funds appropriated by the Legislature through the work program process under s. 339.135(5), F.S. No more than \$200 million worth of projects may be advanced under this program at any given time.

Work Program Deferral and Deletion Notification

Section 339.135, F.S., is amended to revise requirements for FDOT to notify affected counties and cities when deleting or deferring a construction phase for certain transportation projects from the work program. FDOT must transmit a written notification to the chief elected official in each

affected county or city and the chair of each affected Metropolitan Planning Organization. Each notification recipient shall have 14 days to respond to the department with the anticipated effect on their respective concurrency management system. FDOT shall include any written responses in the proposed work program amendment.

Small County Resurfacing Assistance Program (SCRAP)

Section 339.2818, F.S., is amended to reauthorize the SCRAP beginning in FY 2012-2013. The eligibility provisions requiring local governments to impose certain ad valorem rates are removed. FDOT is directed to consider whether a road is located in a fiscally constrained county when prioritizing projects.

Expressway Authority Financial Disclosure Requirements

Section 348.0003, F.S., is amended to require the members of each expressway, transportation, bridge, or toll authority created under chs. 343 or 348, F.S., to comply with the applicable financial disclosure requirements of s. 8, Article II of the State Constitution.

Outdoor Advertising

Several technical revisions are made to ch. 479, F.S., to resolve known problems.

- Section 479.01(1), F.S., is amended to update the definition of “automatic changeable facing.” The new definition recognizes signs and billboards may be changed by means other than mechanically, e.g., electronic or digital display.
- Section 479.07(1), F.S., which requires permits for signs on the State Highway System outside of *incorporated* areas, is revised to require permits for signs outside of *urban* areas. The urban area boundaries, which are designated using U.S. Census Bureau and Federal Highway Administration guidelines, change much less frequently than those of incorporated areas. Designated urban areas are typically larger than incorporated areas.
- Section 479.07(5)(a), F.S., is amended to define the specific placement of sign permit tags on sign structures. The provision affords the industry 2 years within which to comply.
- The bill amends s. 479.07(5), F.S., directing the department to establish by rule, a fee for replacement tags in an amount covering the actual cost. A permittee may also provide its own replacement tag if it conforms to department specifications established by rule.
- Section 479.07(9), F.S., states that if a sign is visible from the controlled area of more than one highway, the sign shall meet the permitting requirements of the highway having the more stringent permitting requirements. Hillsborough and the City of Miami are added to a pilot program that allows highway signs may be closer together under certain circumstances.
- Section 479.08, F.S., is amended to clarify the department’s ability to revoke any sign permit for violating the requirements of the chapter. Under the revision, knowingly false or misleading information must be corrected immediately in order to maintain compliance with the permit. When notifying a permittee of a revocation, the department

must describe in detail the alleged violation and any necessary corrective action. The existing provision allowing aggrieved persons to apply for an administrative hearing under ch. 120, F.S., is not changed.

- Section 479.156, F.S., relating to wall murals is amended to direct FDOT to accept a local government's determination of customary use in lieu of controls established by previous agreement between the state and the United States Department of Transportation.

Logo Sign Program

A number of changes are made to s. 479.261, F.S., relating to the interstate highway Logo Sign Program:

- The program is revised to include logo signs for other services approved by FHWA thereby eliminating the need for repetitive statutory changes as the service categories achieve federal approval.
- The requirement for attractions to charge admission fees in order to be eligible for the program is removed.
- The requirement for a competitive bidding process for permits, unique to the attractions category of services, is removed, making the attractions category consistent with the annual permit fees of the other logo categories.
- The \$1,250 cap on the annual permit fee for business participants is deleted and FDOT is directed to adopt rules establishing reasonable fee rates not to exceed \$5000 in urban areas or \$2500 in rural areas. Proceeds, taking into account costs, are deposited in the State Transportation Trust Fund to be used for transportation purposes.
- The department is authorized to implement a 3-year rotation for program participants who will provide for the eventual replacement of participating businesses at interchanges where waiting lists exist.
- Obsolete language dealing with reimbursement for privately funded signs has been deleted.

Interstate 95

A new section of law is created directing FDOT, in consultation with the Department of Law Enforcement, the Department of Environmental Protection, the Division of Emergency Management of the Department of Community Affairs, the Office of Tourism, Trade, and Economic Development, and affected metropolitan planning organizations and regional planning councils, to study transportation alternatives for the I-95 corridor. The study is to consider state needs relating to:

- transportation,
- emergency management,
- homeland security, and
- economic development.

The report must identify cost-effective measures for;

- alleviating congestion on I-95,
- facilitating emergency and security responses, and

- fostering economic development.

The report must be completed by June 30, 2010. FDOT is required to send the report to:

- the Governor,
- the President of the Senate,
- the Speaker of the House of Representatives, and
- each affected metropolitan planning organization (MPO).

Tampa Bay Commuter Transit Authority

Part III of chapter 343, Florida Statutes is repealed effectively abolishing the Tampa Bay Commuter Transit Authority. Any remaining assets and liabilities are transferred to the Tampa Bay Area Regional Transportation Authority.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The proposed changes regarding wall murals import provision from existing federal law. According to DOT, however, it is possible that provisions of law that allow local government to make determinations regarding “customary use” could be interpreted as allowing exclusive control over the regulation of certain wall murals in violation of federal regulations putting the state at risk of losing up to \$160 million in federal highway funding if the federal government imposes sanctions for noncompliance.

Increased toll charges are authorized to fund state transportation projects. Variable toll rates may be charged on HOT lanes or express lanes. The bill increases fees for replacing permit tags affixed to roadside signs. The maximum fee authorized for logo signs placed near interchanges is increased.

B. Private Sector Impact:

The provisions adding maintenance contracts to the State Arbitration Board process may result in indeterminate reduced costs for maintenance contractors because of reduced

litigation costs. The general public benefits from increased efficiency in the delivery of maintenance projects.

Utility owners can see reduced costs from the utility relocation cost provision.

According to FDOT, removing stop and go cash collection in the travel lanes will:

- reduce congestion on the roadway;
- significantly improve safety at tolling points for both drivers and personnel;
- reduce carbon emissions from idling vehicles by an estimated 185 tons per year; and
- save 24 million gallons of fuel.

Revisions facilitating alternative payment methods and toll collection technologies will ensure the amount paid by drivers relates fairly to the payment option selected by the individual.

The potential need to relocate sign permits and an increase in replacement tag fees will have an indeterminate negative cost impact on outdoor advertisers. The impact will be spread over two years and may be partially offset by enhanced specificity in the statutory description of permit placement.

The provisions relating to the Logo Sign Program may result in increased annual costs for participating businesses. The implementation of participant rotation at wait-listed locations may result in additional businesses participating while also temporarily denying participation to others during the rotation period. Participants in the attractions category may experience savings due to the elimination of the competitive bid requirement.

C. Government Sector Impact:

The provisions adding maintenance contracts to the State Arbitration Board process may result in indeterminate positive administrative cost reductions to FDOT because of reduced litigation costs.

FDOT, local governments, and other authorities will experience indeterminate increases in construction project costs due to the cost of relocating some utilities during the construction of some transportation projects.

The required interoperability of ETC systems may result in transportation authorities experiencing limited alternatives when implementing toll technology solutions.

The provisions authorizing the bonding of HOT and express lanes may lead to excess toll revenues being applied to transportation projects statewide. However, the estimated project cost for Phase 2 of the I-95 Express project is approximately \$213.5 million with annual operating and maintenance costs of about \$10.6 million. Preliminary estimates of gross toll revenues on this segment of the project amount to approximately \$8 to \$9 million annually, well short of fully funding the project.

The department estimates the provisions facilitating all-electronic toll collection could eventually result in the elimination of 142 state positions and approximately \$8,000,000 in supporting budget authority.

The efficiencies created by additional toll payment options will result in indeterminate but positive fiscal impacts.

Currently, up to \$25 million per year may be programmed to SCRAP projects. Inasmuch as the SCRAP program was to be terminated in 2009-2010, no funds have been programmed beyond that year. Revisions in the bill will result in future programming of up to \$25 million per year.

The provisions related to outdoor advertising will likely result in minimal positive impact from increased fees for replacement permit tags, and will remove a negative impact stemming from current fees which do not currently cover costs to FDOT.

The revisions to the Logo Sign Program will likely result in a positive fiscal impact. Using a maximum fee of \$5,000 in urban areas and \$2,500 in rural areas with adjustments for market conditions and traffic counts, and assuming that actual average permit fees will be about 80% of the maximum fee allowed with no significant increase in the number of signed interchanges or in the average number of businesses displaying signs at each interchange, FDOT expects an increase of approximately \$6 million per year before costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 20, 2009:

Section 120.52, F.S., is amended to exclude transportation authorities created under ch. 343, F.S., from the definition of 'agency' for the purposes of ch. 120, F.S., the Administrative Procedure Act.

Section 163.3182, F.S., is amended to establish the legislative finding that inadequate transportation facilities and deficiencies affect the health, safety, and welfare of the state's residents, and adversely affect economic development and growth of the tax base. Elimination of the deficiencies and inadequacies and satisfaction of transportation concurrency standards are paramount public purposes for the state, counties, and municipalities. TCBA's are authorized to issue bonds and other similar debt instruments.

The maturity date of any debt may be no more than 40 years provided, however, all projects eliminating the concurrency backlog are scheduled within the first 10 years. Transportation concurrency trust funds must remain funded and the TCBA must remain in existence until all projects are completed or all debts defeased. The tax increment to be earmarked for the transportation concurrency trust fund, *i.e.*, the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created, is raised from 25 percent to 50 percent. Upon agreement by all taxing authorities included in the interlocal agreement creating the TCBA, the percentage may exceed 50 percent.

When an electric facility is relocated underground in order to enhance vehicular, bicycle, or pedestrian safety, and when the facility has been transferred from a private to a public utility within the past 5 years, then FDOT is responsible for the relocation costs.

Section 339.12, F.S., is amended to raise the \$100 million cap on projects advanced into the work program by contributions from local governments to \$250 million. Additionally, a new paragraph is added to authorize FDOT to enter long-term repayment agreements with counties having populations of 150,000 or fewer persons, for the purpose of advancing transportation projects not already included in the five-year work program. Any project so advanced must be a high priority of the governmental entity, be included in the local comprehensive plan, and may only be reimbursed using funds appropriated by the Legislature through the work program process under s. 339.135(5), F.S. No more than \$200 million worth of projects may be advanced under this program at any given time.

Section 339.135, F.S., is amended to revise requirements for FDOT to notify affected counties and cities when deleting or deferring a construction phase for certain transportation projects from the work program. FDOT must transmit a written notification to the chief elected official in each affected county or city and the chair of each affected Metropolitan Planning Organization. Each notification recipient shall have 14 days to respond to the department with the anticipated effect on their respective concurrency management system. FDOT shall include any written responses in the proposed work program amendment.

B. Amendments:

Barcode 292490 by Community Affairs on March 24, 2009:

Section 339.12, F.S., is amended to raise the \$100 million cap on projects advanced into the work program by contributions from local governments to \$250 million. FDOT is authorized to enter long-term repayment agreements with counties having populations of 150,000 or fewer persons, for the purpose of advancing transportation projects not already included in the five-year work program. Any project so advanced must be a high priority of the governmental entity, be included in the local comprehensive plan, and may only be reimbursed using funds appropriated by the Legislature through the work program process under s. 339.135(5), F.S. No more than \$200 million worth of projects may be advanced under this program at any given time.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
